

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER VAN DE WITTE,
JOHANNES A.M.M. VAN HAAREN,
RIFAT A.M. HIKMET,
and
DIRK J. BROER

Appeal No. 2002-0122
Application No. 08/857,756

ON BRIEF

Before GARRIS, OWENS, and POTEATE, Administrative Patent Judges.
GARRIS, Administrative Patent Judge.

ON REQUEST FOR REHEARING

This is in response to a request, filed August 12, 2003, for rehearing of our decision, mailed June 26, 2003, wherein we affirmed the examiner's Section 103 rejections of all appealed claims.

As correctly indicated in the request, in our above noted decision, we affirmed the examiner's rejection based on each of the two claim interpretations discussed in the answer.



With respect to our affirmance based on the first interpretation (which is discussed in the sole full paragraph which appears on page 5 of the decision), the appellants refer to our discussion of Ito's figure 2 embodiment wherein the degree of inclined angles increases with distance such that the difference of the minimum and the maximum is in the range of 5 to 70 degrees (see the first full paragraph on page 4 of the request). The appellants then argue that, "[h]owever, the **average** of a range of 5-70 degrees wherein 5 is the minimum and 70 is the maximum is **32.5**" and that "[t]his does not fall in the 60-120 degree range [defined by appealed independent claim 1]" (request, page 4, second full paragraph).

Contrary to the appellants' belief, Ito's disclosed range of 5 to 70 degrees does not define patentee's entire range of inclined angles from the minimum (i.e., the inclined angle on the support side) to the maximum (i.e., the inclined angle on the surface side). Instead, this 5 to 70 degrees range defines the difference between the minimum inclined angle and the maximum inclined angle. See lines 28-40 in column 17. Thus, for example, if a minimum inclined angle is 10 degrees, and the difference between the minimum and maximum inclined angles is 70 degrees (i.e., the greatest value of the aforementioned 5 to

70 degrees range), the maximum inclined angle then would be 80 degrees (i.e., 10 degrees plus 70 degrees). Unquestionably, maximum inclined angles (i.e., inclined angles on the surface side) having a value of 80 degrees fully satisfy the appealed independent claim 1 limitation of a range between 60 and 120 degrees.¹

With respect to the second interpretation (which is discussed in the paragraph bridging pages 5 and 6 of our decision), the appellants acknowledge our discussion of Ito's figure 10 embodiment as showing directions for the minimum retardation values 102Ma and 102Mb at an angle of 90 degrees (see the last full paragraph on page 4 of the request) and then point out that patentee discloses this angle as preferably in the range of 0 to 90 degrees (see the first full paragraph on page 5 of the request). Concerning these matters, it is the appellants' argument that "[t]here is no disclosure of the **maximum retardation values** and therefore no way to accurately determine

¹We here emphasize that nothing in appealed claim 1 requires that the angle in question must be measured as an average of Ito's minimum inclined angle to his maximum inclined angle. Stated otherwise, it is proper to consider the above noted claim limitation to be satisfied by considering only the maximum inclined angles (i.e., the inclined angles on the surface side only) of Ito.

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the **average** value in this situation and therefore no anticipation of the claimed average angle range" (request, page 5, second full paragraph).


The above noted argument is fatally premised on a misconception of Ito's disclosure. That is, the appellants seem to believe that the minimum retardation value referred to by Ito represents the lowermost value of an angle range for which no uppermost value (i.e., the so called maximum retardation value referenced by the appellants) is disclosed by patentee. This is unquestionably incorrect. Rather, the aforementioned angles disclosed by Ito with respect to his figure 10 embodiment relate to the angle formed by the projected directions showing the minimum retardation values (e.g., see lines 63-65 in column 22), which is to say, the angle formed by directions showing retardation value of the minimum (e.g., see Table 1 in column 29, especially the ** footnote thereof). When patentee's disclosure regarding the figure 10 embodiment is properly interpreted, it is clear that a 90 degree angle is envisioned by patentee and that this angle fully satisfies the appealed claim 1 limitation of a range between 60 and 120 degrees.

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In summary, we have fully considered the arguments presented by the appellants in the subject request. However, these arguments do not persuade us of error in our June 26, 2003 decision. It follows that the appellants' request is denied.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

DENIED


BRADLEY R. GARRIS
Administrative Patent Ju

Terry J. Owens
TERRY J. OWENS
Administrative Patent Judge

Linda R. Poteate
LINDA R. POTEATE
Administrative Patent Judge

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